

IN THE CIRCUIT COURT OF COLE COUNTY
STATE OF MISSOURI

HANNAH SUE KELLY,
KATHLEEN ANNE FORCK, and
MARY ELIZABETH ANNE COLEMAN,
all citizens and residents of the
State of Missouri,
Plaintiffs,

v.

Case No.

SCOTT FITZPATRICK,
MISSOURI STATE AUDITOR,
Serve at:
301 West High Street, Room 880
Jefferson City, MO 65102

and

JOHN R. ASHCROFT,
MISSOURI SECRETARY OF STATE,
Serve at:
600 West Main Street
Jefferson City, MO 65101

Defendants.

**PETITION CHALLENGING THE FISCAL NOTE SUMMARY PORTIONS OF
OFFICIAL BALLOT TITLES FOR INITIATIVE PETITIONS**

Plaintiffs Hannah Sue Kelly, Kathleen Anne Forck, and Mary Elizabeth Anne Coleman,
for their Petition Challenging the Fiscal Note Summary Portions of Official Ballot Titles for
Initiative Petitions No. 2024-077, 2024-078, 2024-079, 2024-080, 2024-081, 2024-082, 2024-
083, 2024-084, 2024-085, 2024-086 and 2024-087 (collectively, “Initiative Petitions”), state as
follows:

INTRODUCTION

1. Through the eleven above-referenced Initiative Petitions, Anna Fitz-James seeks to propose to Missouri voters 11 similar constitutional amendments. Each proposal would amend Missouri's constitution to make abortion and other wide-ranging, ill-defined "reproductive health care" widely available in Missouri and immunize all who provide such "care" or assist others in obtaining it. *See, e.g.*, Initiative Petition 2024-077. Each amendment would overturn current Missouri law that largely prohibits abortion and create a new, largely unregulated, abortion and "reproductive freedom" industry in Missouri.

2. The proposed amendments would allow the destruction of thousands of pre-born Missouri citizens a year, with profound consequences to Missourians that far eclipse financial concerns. As part of the initiative petition process, however, the State Auditor is legally tasked with the grim calculation of the financial costs to Missouri from this enormous human loss.

3. Specifically, Missouri statutes require the Missouri State Auditor to "assess" the fiscal impact of proposed legal measures, including initiative petitions. 116.175 RSMo. He does so by soliciting fiscal impact submissions from representative State and local entities and receiving fiscal impact submissions from the public, evaluating the reasonableness of the submissions, and then generating a "fiscal note summary" that "state[s] the measure's estimated cost or savings, if any, to state or local governmental entities." 116.175 RSMo. "The fiscal note summary . . . is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative." *Brown v. Carnahan*, 370 S.W.3d 637, 649-50 (2012).

4. The State Auditor has failed to fulfill his legal obligations to "assess," "estimate," and "evaluate" with respect to the proposed initiative petitions. In assessing the information received from solicited sources, the Auditor misused the reasonable calculations he received

from a single county and misrepresented them as the total for all local government entities throughout the State. He then disregarded credible submissions from several sources identifying profound and certain costs to Missouri from making abortion and related “care” freely available.

5. As a result of these failures, the Auditor’s fiscal note summary is legally deficient and inadequate to “advise the voters about the potential cost or savings” to Missouri’s governments. *Brown*, 370 S.W.3d at 649-50. Indeed, it misleads voters. As such, the fiscal note summary cannot form part of a valid legal process aimed at eliciting the will of Missouri voters. It is insufficient and unfair.

PARTIES

6. Plaintiff Hannah Sue Kelly is a Missouri State Representative, a citizen of Missouri, and a resident of Wright County, Missouri.

7. Plaintiff Kathleen Anne Forck is active in the pro-life movement, a citizen of Missouri, and a resident of Callaway County.

8. Plaintiff Mary Elizabeth Anne Coleman is a Missouri State Senator, a citizen of Missouri, and a resident of Jefferson County, Missouri.

9. Defendant John R. Ashcroft is the Missouri Secretary of State and is sued in his official capacity pursuant to the requirements of 116.190.2 RSMo.

10. Defendant Scott Fitzpatrick is Missouri State Auditor and is sued in his official capacity pursuant to the requirements of 116.190.2 RSMo.

STATUTORY AUTHORITY AND VENUE

11. Plaintiffs bring this action pursuant to 116.190 RSMo.

12. Venue is proper in this Court pursuant to 116.190 RSMo.

FACTS

13. The fiscal note summary portions of the official ballot titles for each of the eleven initiative petitions are identical, and the eleven corresponding fiscal notes are substantively the same. The fiscal notes and fiscal note summaries can be found, in full, as follows:

Fiscal Note Number	Date Received by Auditor	Fiscal Note Description	Date Submitted to Secretary of State
<u>24-087</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 11 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-086</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 10 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-085</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 9 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-084</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 8 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-083</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 7 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-082</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 6 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-081</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 5 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-080</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 4 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-079</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 3 (Fitz-James) - Reproductive Rights</u>	07/21/2023

<u>24-078</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 2 (Fitz-James) - Reproductive Rights</u>	07/21/2023
<u>24-077</u>	03/09/2023	<u>Proposed Constitutional Amendment - Article I, version 1 (Fitz-James) - Reproductive Rights</u>	07/21/2023

14. The fiscal note summary for each of the eleven Initiative Petitions reads as follows:

State governmental entities estimate no costs or savings, but unknown impact. Local governmental entities estimate costs of at least \$51,000 annually in reduced tax revenues. Opponents estimate a potentially significant loss to state revenue.

15. For each initiative petition, Missouri law provides that “the auditor shall assess the fiscal impact of the proposed measure” and generate a “fiscal note and fiscal note summary” that “state the measure’s estimated cost or savings, if any, to state or local governmental entities.” 116.175 RSMo. The Missouri Supreme Court has elaborated that “[t]he fiscal note summary . . . is intended to advise the voters about the potential cost or savings, if any, from the adoption of the initiative.” *Brown v. Carnahan*, 370 S.W.3d 637, 649-50 (2012).

16. In preparing a fiscal note summary that will advise voters, the Auditor is charged with evaluating the “reasonableness” of solicited and unsolicited fiscal impact submissions he receives, whether from state and local government entities or from proponents or opponents of the particular initiative. *Id.*

17. The Auditor failed to discharge his duties to “assess” the fiscal impact of the proposed initiative petitions, to “estimate” the cost or savings of the initiative petitions to state or local governmental entities, and to evaluate the reasonableness of the fiscal impact submissions he received. As such, his fiscal note summary is legally deficient and inadequate to advise voters

of the potential cost or savings to Missouri's state and local governments of these initiative petitions.

Stating that “[l]ocal government entities estimate” the cost of the initiative petitions to be “at least \$51,000” involved no “assessment,” or “estimation,” by the Auditor and is an inaccurate representation of the submissions to the Auditor. It therefore does not satisfy the Auditor’s duty to advise voters.

18. The fiscal note summary states that “Local government entities estimate costs of at least \$51,000 annually in reduced tax revenues.” This statement is inaccurate in a way that is both misleading to voters and obvious to and curable by the Auditor. Using this number as if it represents a possible total cost to local governments throughout the state represents a relinquishment of the Auditor’s responsibility to “assess the fiscal impact” of the initiative petitions and “state the[ir] estimated cost” to voters. The Auditor has therefore failed to discharge his duty to generate a fiscal note summary that will advise Missouri voters.

19. The Auditor’s process, both in this case and as elaborated by the Missouri Supreme Court in *Brown v. Carnahan*, includes soliciting “fiscal impact submissions” from a representative selection of local government entities. *Brown*, 370 S.W.3d at 649. “The auditor chooses local governmental entities based on geography, population, and form of government to ensure a good cross-section of local governments that might be affected by the proposal are represented.” *Brown*, 370 S.W.3d at 649.

20. In this case, Greene County submitted a fiscal impact statement pursuant to the Auditor’s request, in which it estimated that it would lose \$50,886.90 of tax revenue in the coming year if abortion were made freely available under the constitutional amendment proposed by Initiative Petition 2024-077. (The same Greene County fiscal impact statement was also used with respect to the ten other Initiative Petitions.) Greene County’s submission laid out the calculation that yielded this estimate, which was based on DHSS statistics recording yearly

“resident abortions” in Greene County, United States census population statistics for Greene County, and 2022 sales and property taxes received by Greene County. Fiscal Note (24-077) at 5-7. Greene County further pointed out that, since a loss of population would occur each year, the actual loss to the county could be “extrapolated to illustrate less tax collections and revenues over the years of potential working lifetimes.” *Id.* at 5.

21. Apparently crediting Greene County’s estimate as reasonable, the Auditor included its \$51,000 loss in the Fiscal Note Summary. Fiscal Note (24-077) at 28. However, the Auditor’s summary states: “Local government entities estimate costs of at least \$51,000 annually in reduced tax revenues.” *Id.* While Greene County’s estimate was reasonable and based on valid data and legitimate forecasting, the Auditor’s statement that that \$51,000 was the estimate of “Local government entities” misuses Greene County’s data and misrepresents its significance, with the end result of misleading voters.

22. In short, either all counties in Missouri will lose tax revenues as a result of freely available abortions or none will. Moreover, as Greene County itself pointed out to the Auditor, after it experiences a \$51,000 loss in the first year, its losses will be compounded each year by additional lost citizens. So, that figure is deficient even to represent losses to Greene County alone. Therefore, it is misleading to state that “Local government entities” estimate a total loss of \$51,000, as if \$51,000 could possibly represent the entire loss to all of Missouri’s local governments.

23. In this case, an extrapolation from the data before the Auditor would have been simple, following Greene County’s pattern of using the freely available abortion, population, and taxation statistics for other local jurisdictions in Missouri and for the State. And, if the Auditor found Greene County’s submission sufficiently reasonable to be included in his fiscal note

summary, there is no reason why he did not use that single county estimate to “assess” and “estimate” the costs to local governments throughout the whole state.

24. Although the Auditor is not required by Missouri law to use a particular methodology to “assess” and “estimate” the cost or savings that will attend a certain proposition, he is obliged to do some assessment and estimation. At the very least, the Auditor’s responsibility to generate a fiscal note summary that can advise Missouri voters by “stat[ing] the measure’s estimated cost or savings, if any, to state or local governmental entities,” 116.175 RSMo., must include a positive duty not to mislead voters. Characterizing Greene County’s estimate of its own loss in a single year as an “at least” estimate of the total future losses to “[l]ocal government entities” throughout the State is inaccurate in such a way that voters are certain to be misled.

The Auditor wrongly disregarded or discredited significant, concrete, and even certain losses to Missouri that were raised by contributors of fiscal impact statements.

25. The Auditor’s Fiscal Note Summary states that “[o]pponents estimate a potentially significant loss to state revenue.” This statement is inadequate to “advise the voters about the potential cost or savings, if any, from the adoption of the initiative.” *Brown v. Carnahan*, 370 S.W.3d 637, 649-50 (2012). In the statement “potentially significant loss to state revenue,” the Auditor glosses over enormous potential and certain costs to Missouri that were squarely raised in multiple, credible submissions to the Auditor and therefore should have been included in the Fiscal Note Summary.

26. The Auditor should have warned Missourians that the initiative petitions imperil billions of dollars in federal Medicaid funding to Missouri. Most prominently, several submissions raised the threat the initiative petitions pose to receipt of federal Medicaid funds, which are budgeted at \$12.5 billion in 2024 alone. As several fiscal impact submissions pointed

out, the federal government has a recent history of withholding or threatening to withhold Medicaid funding where a state's laws required medical care providers or employers to fund or participate in abortion. *See* Fiscal Note (24-077) at 10 (submission of Susan Klein, Executive Director of Missouri Right to Life); 14-15 (submission of Samuel Lee, Director of Campaign Life Missouri, citing instances in California and Vermont). The initiative petitions' broad language permits interpretations that would require Missourians to provide and participate in abortions in ways that violate federal law.

27. As stated in multiple fiscal impact submissions, the risk to Missouri Medicaid funding of adopting a state abortion law that conflicts with federal law is substantial, and the amounts of funding in question are enormous and potentially crippling to Missouri's healthcare system and economy. It was not consistent with his responsibility to advise Missouri voters for the Auditor to fail to inform them of this risk.

The Auditor should have warned voters of the certain and significant financial losses to Missouri that will attend the destruction of large numbers of future Missouri citizens, workers, creators, taxpayers, and heads of families.

28. Several fiscal impact submissions pointed the Auditor to the certain and significant losses to Missouri caused by the destruction of thousands of its future citizens each year. Samuel Lee of Campaign Life directed the Auditor to the June 15, 2022, report of the Joint Economic Committee Republicans, "The Economic Cost of Abortion," which estimates that the loss to an economy of losing a single future citizen to abortion is 425 times greater than the economic loss to a mother from having the child. JEC Republicans, "The Economic Cost of Abortion," at 1. That study further points out that "abortion shrinks the labor force, stunts innovation, and limits economic growth. It also weakens the solvency of social insurance

programs like Social Security and Medicare that rely on workers to support a growing elderly population.” *Id.*

29. Greene County’s submission directed the Auditor to a Pew Trusts Issue Brief on the grim effects of low fertility rates on state budgets. Fiscal Note (24-077) at 5-6 (referring the Auditor to Pew, “The Long-Term Decline in Fertility—and What It Means for State Budgets,” Dec. 5, 2022, available at <https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2022/12/the-long-term-decline-in-fertility-and-what-it-means-for-state-budgets>). That report predicts significant, long-term adverse impacts on state revenue streams from loss of income, sales, and property taxes as well as federal funding, which is often granted on a population basis, as a result of historically low fertility rates. Reducing Missouri’s fertility even further through freely available abortion will compound all of these impacts.

30. Rachel U. Greszler of the Heritage Foundation offered a fiscal impact submission directly addressing the high projected costs to Missouri of population loss from abortion. Fiscal Note (24-077) at 24-27. She points to the same lost labor force contributions of aborted citizens that is noted by the JEC Republicans—*i.e.*, that the loss to the economy of destroying future citizens, workers, and taxpayers is much greater and longer in duration than any positive impact on women’s earnings as a result of abortion. She also points to the loss of tax revenue and the loss of contributors to pension and other post-employment benefits.

31. These future losses to Missouri from loss of population due to abortion are both absolutely certain (fewer citizens definitely means fewer future taxpayers and laborers) and potentially generational and infinite. The Auditor’s responsibility to assess and estimate the costs to Missouri of the initiative petitions required, at a minimum, an acknowledgment of these

certain future costs of making abortion freely available, which were raised by multiple submissions.

The Auditor should have warned voters of the certain and significant budgetary demands the initiative petitions would place on the Missouri Department of Health and Senior Services.

32. The Missouri code tasks the Missouri Department of Health and Senior Services with annual inspections and licensing of abortion facilities. Fiscal Note (24-077) at 16-17. *See* 197.205 RSMo. Under the constitutional amendment proposed by the initiative petitions, every one of Missouri's 7,000 pharmacies would become a purveyor of chemical abortions and therefore subject to this licensing regime. *See* definition of "abortion facility" in section 188.015. Hundreds of new facilities for providing abortions and other reproductive procedures would also spring up in Missouri if it became an abortion and reproductive cure-all destination state, as contemplated by the proposed amendments.

33. The prospective costs to the Department of Health and Senior Services of providing tens of thousands of new inspections and licenses annually are a certain and substantial cost of the initiative petitions, and they were highlighted by fiscal impact submissions. The Auditor's duty to "assess" and "estimate" the cost to voters of the initiative petitions extended to reporting these certain and estimable costs.

The Auditor should have warned voters of the certain and significant burdens the initiative petitions will place on the Missouri healthcare system by making Missouri an "abortion destination" state.

34. Allowing for widely available abortions and other unspecified reproductive procedures, especially to be performed with impunity by non-professionals and unlicensed providers, on all patients regardless of age, health or condition, will without doubt generate a substantially increased need for health care in Missouri. To guarantee Missourians and others

free access to abortions and undefined “reproductive freedom” in Missouri necessarily implies a guarantee to provide follow up health care for individuals (citizens and abortion visitors) who need support after surgical and chemical abortions, who suffer abortion-related complications and injuries, who need follow-up for complications or consequences of other “reproductive” procedures, and who need mental health support related to these traumatic procedures.

35. The increased burden on Missouri’s health care system will therefore be profound. Samuel Lee of Campaign Life reported to the Auditor the high costs of emergency department care and admissions for post-abortive women and for pre-term infants born after attempted abortions. Fiscal Note (24-077) at 15-16. Such cases will proliferate in a Missouri that makes abortion widely available, and taxpayers will bear the costs.

36. Simultaneously, as pointed out to the Auditor by Susan Klein of Missouri Right to Life, requiring state health care providers to participate in abortions and other reproductive procedures will cause an exodus from state medical institutions of those who cannot in conscience participate. Fiscal Note (24-077) at 10. This exodus will compound the strain generated by the increased demand for care following abortions and other broad-ranging reproductive procedures.

37. The Auditor’s responsibility to assess and estimate the costs to Missouri of the proposed constitutional amendments includes the responsibility to acknowledge and convey to voters the certain and significant burdens that freely available, unregulated abortions and other procedures will impose on Missouri’s healthcare system.

38. In each of the foregoing particulars, the fiscal note summary portions of the eleven official ballot titles are insufficient and unfair.

39. To correct the insufficiencies and unfairness, Plaintiffs request this Court to certify a different fiscal note summary for the official ballot titles of the Initiative Petitions.

40. To be sufficient and fair in a manner that is neither argumentative nor likely to prejudice voters for or against the Initiative Petitions, the fiscal note summary portion of the official ballot titles could read as follows (47 words (44 words excluding articles)):

Local governmental entities estimate costs due to reduced tax revenues, which across the state could be estimated to cost millions of dollars annually. In addition, revenue losses to the State and additional health care costs to the State are unknown but could be billions of dollars annually.

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully request this Court:

- A. Consider this Petition, receive evidence, hear arguments and certify to Defendants fiscal note summaries for Initiative Petitions No. 2024-077, 2024-078, 2024-079, 2024-080, 2024-081, 2024-082, 2024-083, 2024-084, 2024-085, 2024-086 and 2024-087 that are sufficient and fair;
- B. Enter judgment in Plaintiffs' favor against Defendants; and
- C. Allow such further relief as is just and proper.

CLAYTON PLAZA LAW GROUP, L.C.

By: /s/ Timothy Belz
 Timothy Belz #MO-31808
 112 South Hanley, Suite 200
 St. Louis, Missouri 63105-3418
 Phone: (314) 726-2800
 Facsimile: (314) 863-3821
 tbelz@olblaw.com

Special Counsel for Thomas More Society

Attorney for Plaintiffs